



**Office of the Attorney General
State of Texas**

MORALES
ATTORNEY GENERAL

October 20, 1993

Honorable Mike Driscoll
County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 93-94

Re: Fees for issuing and "serving" a
writ of income withholding for child
support (RQ-548)

Dear Mr. Driscoll:

On behalf of the Harris County District Clerk, you ask several questions about fees for issuing and "serving" a writ of income withholding for child support. Section 14.45 of the Family Code, which sets forth the requirements for a writ of income withholding, provides in pertinent part:

(a) **Issuance and Delivery.** No sooner than 20 days following the mailing of a notice of delinquency to the obligor by first class mail or 11 days after receipt of a notice of delinquency by the obligor by hand delivery or certified mail, if no motion to stay issuance of the writ has been filed, the attorney who filed the notice of delinquency shall file a request with the clerk of the court to issue a writ of income withholding. The writ shall be issued by the clerk and delivered by certified mail, return receipt requested, to the employer of the obligor to the person authorized to receive service of process in civil cases generally, or to a person designated by the employer to receive writs of withholding by written notice to the clerk of the appropriate court, or by the service of citation as provided in the Texas Rules of Civil Procedure. The amount to be withheld shall be paid to the person or office named in the writ on each pay date and shall include with the payment the date on which the withholding occurred. The writ shall be issued and mailed by the clerk not later than the second working day after the request is filed.

First, you ask what fee should be assessed for the issuance of a writ of income withholding.¹ You also ask what fee the district clerk shall assess for "serving" a writ of income withholding by certified mail, return receipt requested.

¹Prior to September 1, 1993, section 14.45 of the Family Code did not establish a fee for the issuance of the writ by the district court. Section 51.318(b)(2) of the Government Code, however, established certain district court fees, including an \$8.00 fee

Apparently, there has been some confusion regarding whether district clerks are authorized to assess a separate fee for delivering a writ of income withholding. We understand that some county district clerks have assessed an \$8.00 fee for both issuing and delivering a writ. *See supra* note 1. On the other hand, your second question assumes that district clerks are authorized to assess a separate fee for delivering a writ of income withholding, and that delivering such a writ is the same as serving process.² We understand that the Harris County District Clerk has assessed a \$50.00 fee for "serving" a writ of withholding.

We believe that it is unnecessary for this office to choose between these conflicting interpretations of the law. The legislature recently added subsection (h) to section 14.45 of the Family Code, which provides that "[t]he clerk of the court may charge a reasonable fee for each writ issued and delivered to an employer by mail, not to exceed \$15." *See* Acts 1993, 73d Leg., ch. 417, § 4 (eff. Sept. 1, 1993). We conclude that this legislative amendment, which became effective September 1, 1993, clarifies that a district clerk may assess *one* fee not to exceed \$15.00 for issuing and delivering a writ of income withholding.

You also ask if the fee for issuing and delivering a writ of income withholding is different if the person seeking the writ is being assisted by the Harris County Domestic Relations Office. We have reviewed section 152.1075 of the Human Resources Code, which authorizes the Harris County Commissioners Court to establish a domestic relations office. With respect to fees, that section provides as follows:

(c) The commissioners court may set a schedule of reasonable application fees to be paid by applicants requesting services from the office. . . .

(d) The office may assess and collect reasonable attorney's fees incurred or ordered by the court and taxed as costs in a proceeding.

(e) The chief administrative officer or the officer's agent shall attempt to collect the application fee and attorney's fees in an efficient manner.

These provisions do not address court fees and do not require the district clerk to assess different fees against a person who is assisted by the Harris County Domestic Relations

(footnote continued)

for issuing a citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, or writ of sequestration not provided for in section 51.317, or any other writ or process not otherwise provided for, including one copy if required by law. [Emphasis added.]

²We express no opinion regarding whether your assumptions are correct.

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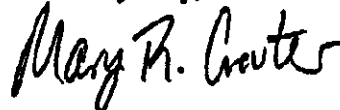
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Office, nor are we aware of any other statute which so mandates. Therefore, we conclude that the fee for issuing and delivering a writ of income withholding is no different if the person seeking the writ is being assisted by the Harris County Domestic Relations Office.³

S U M M A R Y

Under section 14.45(h) of the Family Code, a district clerk may assess *one* fee not to exceed \$15.00 for issuing and delivering a writ of income withholding. See Acts 1993, 73d Leg., ch. 417, § 4 (eff. Sept. 1, 1993). The fee for issuing and delivering a writ of income withholding is no different if the person seeking the writ is being assisted by the Harris County Domestic Relations Office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

³We note that the same legislation which clarified that the fee for issuing and delivering a writ of income withholding may not exceed \$15.00, also made this fee applicable to cases in which a party is represented by the attorney general or pursuant to a contract with the attorney general under section 76.007(b) of the Family Code. See Hum. Res. Code § 76.009(a)(3) and Fam. Code § 14.45(h) as amended by Acts 1993, 73d Leg., ch. 417, § 4 (eff. Sept. 1, 1993).